

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nancy E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Public Inquiry Concerning the
Section 701 Report

Docket No. PI2016-3

SUPPLEMENTAL COMMENTS OF ELAINE MITTLEMAN ON THE
REPORT TO THE PRESIDENT AND CONGRESS
PURSUANT TO SECTION 701 OF THE
POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT
COMMENTS ABOUT HISTORIC VENICE, CALIFORNIA,
POST OFFICE BUILDING AND BIBERMAN MURAL

(July 6, 2016)

I appreciate the opportunity to provide comments on Docket No. PI2016-3. The Order Seeking Comments includes several topics identified by the Commission as potential areas of interest. The topics were identified to further the Commission's mission of enhancing transparency and accountability of the Postal Service. Following are my comments on the Postal Service oversight and monitoring of historic post offices and murals. These comments will address the historic Venice, California, Post Office building and Biberman mural, but the issues apply generally to historic post office buildings and murals.

I. Sale of Venice, California, Post Office to movie producer Joel Silver

On July 18, 2011, the Postal Service approved the relocation of the Venice, California, Post Office, located at 1601 Main Street, to the Venice Carrier Annex, located at 313 Grand Boulevard. There was considerable opposition to the relocation to the Venice Carrier Annex and sale of the historic Venice Post Office building. These comments will address what happened to the Venice Post Office building and mural after the relocation.

In the July 18, 2011, announcement about the relocation, the Postal Service stated that:

Both Venice facilities are owned by the Postal Service, and once the move is completed, plans call for the sale of the building at 1601 Main St. That facility is a registered historic building and USPS will ensure the historic characteristics are maintained through covenants conveyed to a future buyer as an attachment to the deed.

http://about.usps.com/news/state-releases/ca/2011/ca_2011_0718b.htm

The Postal Service sold the Venice Post Office to movie producer Joel Silver. The *Los Angeles Times* reported in an article dated September 7, 2012, that Joel Silver had purchased the former U.S. post office in Venice. The article explained that “the red-tile-roofed 1939 Works Progress Administration building on Windward Circle has been a beloved fixture in Venice. The interior features a mural painted by Edward Biberman in 1941 with the coastal community’s visionary developer Abbot Kinney at its center, surrounded by beachgoers in old-fashioned

bathing suits, men in overalls and once-ubiquitous oil derricks.” The article also noted that residents had voiced their objections to closing the post office. In addition, there were concerns about the public access provision for the “Story of Venice” mural. <http://articles.latimes.com/print/2012/sep/07/local/la-me-venice-post-office-20120907>

In October 2012, Joel Silver had a presentation at the Venice Post Office about his plans to use the Venice Post Office as the new headquarters of his Silver Pictures. Mayor Antonio Villaraigosa told the guests that “Joel’s decision to restore this historic post office is a win-win for Los Angeles.” According to an article in the *Los Angeles Times*, the post office structure would be transformed over the next 18 months into a high-tech office and production facility. The façade and windows would be restored and the lobby would be rebuilt, with ceilings reconstructed to match their early opulence.

Of particular significance and importance to the Venice community is the 1941 Edward Biberman mural that depicts Venice’s early history. The mural is the property of the Postal Service. During the Joel Silver presentation, the mural was being cleaned by conservationists. Silver indicated that the mural would be removed, fully restored and then reinstalled. Silver said he planned to let members of the public make reservations to see the mural. <http://articles.latimes.com/2012/oct/11/local/la-me-venice-post-office-20121011>

II. Failure to complete renovation of historic Venice Post Office building

In spite of the plans to renovate the historic Venice Post Office building, the renovation project is not completed. There have been media reports about Joel Silver's financial problems and lawsuits concerning the post office renovation. A March 26, 2015, article in *Variety* reported that work on the renovation had stalled. The article explained that "[t]he project has been beset by multiple design changes, unpaid bills and taxes that are past due." Also, "[t]he future headquarters of Silver Pictures – covered in scaffolding and scarred by graffiti – appears nowhere near ready for its grand debut." <http://variety.com/2015/film/news/joel-silver-venice-post-office-in-debt-1201460341/>

An article dated August 28, 2015, in *The Hollywood Reporter* stated that Joel Silver was being sued over real estate and art loans. The article explained that Silver had met in March 2014 with a person from a financial restructuring firm to explain that he "needed to raise money to pay off high-interest-rate obligations on loans, including one linked to a former post office in Venice that he had hoped to turn into his new offices." <http://www.hollywoodreporter.com/print/818341>

The present status of the historic Venice Post Office building is shown in photos (attached here) that were recently taken. There are serious concerns about the appearance and physical condition of the building. Further, rather than

improving the Venice community, the historic building is contributing to blight. In addition, there is concern about the public availability of the 1941 Biberman mural.

III. Postal Service responsibility and commitment concerning the historic Venice Post Office building and Biberman mural

It is important to understand the responsibilities and commitments of the Postal Service in relation to the historic Venice Post Office building and the 1941 Biberman mural. The USPS website includes an op-ed written by Tom Samra, the facilities vice president of the U.S. Postal Service. The op-ed appeared in the Daily Cal on March 14, 2014. It is titled, “Our financial crisis gives us no choice in the sale of buildings.” <http://about.usps.com/news/electronic-press-kits/usps-sets-the-record-straight/financial-crisis.htm>

In addressing concerns about historic post office buildings, Mr. Samra wrote:

All our stakeholders can be assured that the Postal Service, the roots of which date back to 1775, respects and values the rich history of this nation, which is why we carry out effective preservation efforts in buildings we continue to own.

We also ensure that these historic buildings are in better condition because of the covenants and easements in place for the future when we decide to relinquish ownership. In some instances, purchasers of historic postal facilities engage in preservation efforts that exceed those previously undertaken by the Postal Service.

When the Postal Service sold the historic Venice Post Office building to Joel Silver, the Postal Service may have anticipated and expected that Mr. Silver would

engage in thorough preservation efforts for the historic building. However, the present condition of the historic Venice Post Office building raises substantial questions as to the capability and success of the preservation efforts by Joel Silver. Unfortunately, the historic Venice Post Office building appears to be in much worse condition now than when the Postal Service owned the building. At a minimum, the halt in preservation efforts has contributed to blight and other serious problems in the Venice community.

It is instructive to review the agreements and notices concerning the sale of the Venice Post Office. The Final Decision regarding the relocation of retail services in Venice, California, was a letter (attached hereto) signed by David E. Williams, Vice President, Network Operations. The Final Decision letter does not include a date.

In the Final Decision letter, Mr. Williams discussed the impact which the Postal Service's decision to relocate retail services might have on historic resources. Mr. Williams wrote, as follows:

The Venice Main Post Office was constructed in 1939 and is eligible for listing in the National Register of Historic Places. An oil-on-canvas mural entitled, "Story of Venice" by artist Edward Biberman is currently on display in the lobby. Several customers expressed concern that the building and/or mural would not be preserved.

Section 106 of National Historic Preservation Act ("NHPA") requires federal agencies to take into account the effects of their proposed undertakings on historic properties, and when

such effects are possible, to initiate and complete the Section 106 consultation process. Section 106 review ensures that federal agencies consider historic properties, along with other factors such as cost and agency mission, in the planning process of proposed undertakings. However, the preservation of every historic property is not the goal of Section 106, nor does Section 106 require a business to continue to operate in a historic property even if doing so causes the business to become unprofitable.

The relocation of retail services is not an “undertaking” within the meaning of Section 106. An undertaking is a “project, activity or program” that can result in changes in the character or use of historic properties. The relocation of retail services does not alter the character of the Venice Main Post Office building or the mural. Nor does it change the uses that can be made of the property. There will be no “undertaking” within the meaning of NHPA until the Postal Service adopts a plan for the reuse of the Venice Main Post Office or the transfer of the Post Office building from Postal Service ownership to private ownership. The Postal Service will initiate the Section 106 consultation process when it develops plans for the reuse or disposal of the property, and the City of Venice will be a consulting party. The Postal Service will include measures to ensure the mural will remain available for public viewing in any plan for reuse or disposal of the Post Office property.

When the Postal Service did plan to sell the Venice Post Office building to Joel Silver, there was correspondence about preservation covenants. In a letter dated July 20, 2012 (attached hereto), to Dallan Wordekemper, Federal Preservation Officer, United States Postal Service, from Ken Bernstein, Principal City Planner and Manager, Office of Historic Resources, City of Los Angeles, Mr. Bernstein stated that he was writing on behalf of the City of Los Angeles. Mr. Bernstein wrote:

We understand that the California State Historic Preservation Officer (SHPO) is not authorized by California state law to accept a preservation covenant or easement that would allow the transfer of this property to occur with a finding of no adverse effect (NAE) under Section 106 of the National Historic Preservation Act. Because the Venice Post Office is a historic resource of considerable significance within the Venice community and the City of Los Angeles, the City and the Office of Historic Resources are eager to play a constructive role in ensuring the building's long-term preservation and vibrant reuse.

City staff have reviewed the draft preservation covenant originally prepared for the SHPO, and have inserted the City in place of the SHPO along with a few minor modifications to the draft. The City of Los Angeles agrees that it will assume the duties and responsibilities of the attached covenant.

The Preservation Covenant for 1601 Main Street, Venice, CA 90291

(attached hereto), included the following language:

In consideration of the conveyance of certain real property, located at 1601 Main Street within the Venice community of the City of Los Angeles, the County of Los Angeles, State of California.

(1) The grantee hereby covenants on behalf of itself, its heirs, successors and assigns at all times to restore, maintain and preserve this property in accordance with the recommended approaches of the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings" (National Park Service, 1995) in order to preserve those qualities that make this property eligible for listing in the National Register of Historic Places.

(2) No construction, alteration or rehabilitation shall be undertaken or permitted to be undertaken that would affect

the historic features of the property without prior consultation with, and the express permission of the City of Los Angeles (“City”), pursuant to an application made by the grantee to the Department of City Planning and its Office of Historic Resources. No excavation or other subsurface ground disturbances may be done or permitted to be done at the property without prior consultation with, and the express permission of, the Native American Heritage Commission (NAHC) and those Native American tribal organizations identified by the NAHC as having knowledge of Native American cultural resources on, under or near the property (collectively, the “Native American Organizations”). Grantee shall make such application to the NAHC as may be necessary for grantee to obtain the identity of the applicable Native American tribal organizations.

(3) The City and authorized representatives of the Native American Organizations shall be permitted at all reasonable times to inspect the property in order to ascertain if the above conditions are being met.

(4) In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the City and/or the Native American Organizations, as applicable may, but are not required to, following reasonable notice to the grantee, institute suit to enjoin said violation or to require the restoration of the property.

(5) This covenant is binding on the grantee, its heirs, successors and assigns in perpetuity. All stipulations and covenants contained herein shall be inserted by the grantee verbatim or by express reference in any deed or other legal instrument by which the grantee divests itself of any interest in the property or any part thereof.

(6) The failure of the City or the Native American Organizations to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or use of such right or remedy at any other time.

(7) This covenant shall be a binding servitude upon the property and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the grantee agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

(8) The City may, for good cause, modify or cancel any or all of the foregoing restrictions other than the restrictions upon excavation or subsurface ground disturbance, upon application of the grantee, its heirs, successors or assigns. Cancellation or modification of the restrictions on excavation or subsurface ground disturbance may be made only by the Native American Organizations upon application of the grantee, its heirs, successors or assigns.

Ken Bernstein recently discussed in an email dated June 28, 2016, the present status of the historic Venice Post Office building and the 1941 Biberman mural. Mr. Bernstein wrote:

[T]he Biberman mural has been in storage at U.S. Art Company, a fine art handling/storage facility in Compton, CA, since the end of an exhibition of the mural at the L.A. County Museum of Art (LACMA). Work on the Post Office building remains on hold while Silver Pictures resolves litigation related to construction issues: Silver Pictures' CEO, Hal Sadoff, informs me that this is currently in arbitration and should be resolved in the next several months. The exterior of the building is now sealed and they have a completed building shell; however, no interior work has proceeded recently. Mr. Sadoff said Silver Pictures is still committed to the project and they expect to complete the work in 12 months after work resumes. Silver Pictures continues to pay for 24-hour security on-site, at a cost of \$8,000 per month. Our office is requesting access to the site this summer to conduct an inspection of the condition of the property.

It is noteworthy that Mr. Bernstein indicated that Silver Pictures expects “to complete the work in 12 months after work resumes.” However, it is not clear when work on the project will resume. As a result, the present blighted status of the historic Venice Post Office building could continue for an extended period of time.

In addition, Mr. Bernstein stated that “the Biberman mural has been in storage at U.S. Art Company, a fine art handling/storage facility in Compton, CA,” since the end of the mural’s exhibition at LACMA. It would be helpful for the Postal Service to explain its activities in monitoring the location and condition of the Biberman mural. Further, it would be useful to know what expenses are being incurred to store the Biberman mural. Finally, the Postal Service should explain whether it has considered placing the mural in a public space in Venice, rather than keeping it in storage in Compton, California. The Postal Service is the owner of the mural and should be willing and able to display the historic mural in a public location in Venice.

Even if the Postal Service has sold the historic Venice Post Office building, it should have a continuing role in ensuring that the historic property is preserved. In addition, the Postal Service still owns the historic 1941 Biberman mural. Thus, the duty of the Postal Service to protect the mural and, hopefully, to provide public access, is ongoing.

Mr. Samra wrote that the Postal Service ensures “that these historic buildings are in better condition because of the covenants and easements in place for the future when we decide to relinquish ownership.” However, it is sadly obvious that the historic Venice Post Office building is not in better condition after the sale of the building to Joel Silver. In fact, the present condition of the historic Venice Post Office building is of great concern to many and is a blight in the Venice community.

The Postal Service should review and monitor its program to protect historic post office buildings and murals. In light of the sales of numerous historic post office buildings, there should be an emphasis on ensuring that the post office buildings remain in good condition after they are sold. There should also be a program to track the condition and locations of murals and the extent to which the public has access to those murals.

I am requesting that the Postal Service perform strict oversight of the condition of the historic Venice Post Office building and the 1941 Biberman mural. I am further requesting that the Postal Service report about actions it has taken to ensure that the historic Venice Post Office building will be preserved and that the 1941 Biberman mural be restored and returned to Venice. The location of the Biberman mural should be in Venice and not in a museum, storage facility or other building outside of Venice. The mural tells the “Story of Venice.” It should

be proudly displayed in Venice for the public to see and treasure the history of their community.

I appreciate the opportunity to provide comments on this Docket. I would be glad to provide additional information or participate further in this matter.

Respectfully submitted,

/s/ Elaine Mittleman

Elaine Mittleman

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Falls Church, VA 22043

(703) 734-0482

elainemittleman@msn.com





IN EVERY LIFE
THERE'S A
BATTLE
WORTH
BELIEVING IN



WE'LL BUILD
A BETTER
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OUT OF ALL
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THE SOUND
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TAKES SO MUCH
MORE WORK





WARNING
NO TRESPASSING
UNAUTHORIZED ENTRY INTO THIS AREA
IS PROHIBITED BY LAW
PENALTY: \$500 FINE
OR 6 MONTHS IN JAIL

GRAFFITI: *NEVER READ: TEARS: SICK: ...*

THE SOUND OF THIS DREAM IS DEAFENING

DANCE ACROSS THE WORDS THAT ONCE DEFINED YOU

IF ONLY THEY UNDERSTOOD THAT
HATE
TAKES SO MUCH MORE WORK

OUR HOPE SPANS THE MILES BETWEEN US

A DREAM UNTESTED IS EASILY PUNCTURED

MAY OUR TEARS BE MADE OF GASOLINE TO KEEP US GOING

SOMETIME HOME ISN'T FOUND IT'S EARNED

LA ESPERANZA ES PESADA PERO NUESTROS CORAZONES SON FUERTES





DRUGS R.



PEDESTRIANS PROHIBITED



WOMEN'S WEAR
APRIL 10 - AUGUST 21

IF ONLY THEY UNDERSTOOD THAT
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JOHN MCKAY
JENNIFER
JENNIFER





Final Decision Regarding Relocation of Retail Services in Venice, California

In accordance with the procedures set forth at 39 C.F.R. § 241.4(c)(6), this is the final decision of the Postal Service with respect to the relocation of retail services from the Venice, California Main Post Office at 1601 Main Street to the Venice Carrier Annex at 313 Grand Boulevard. The Postal Service announced its decision to relocate retail services on July 18, 2011 and subsequently received requests for review from several postal customers. I have carefully considered all the concerns expressed by our customers in each of the requests for review and other correspondence along with the complete project file relating to the relocation proposal. While I am sympathetic to some of the concerns raised, for the reasons set forth below, I will not set aside the Postal Service's prior decision.

Postal customers raised concerns about impacts the Postal Service's decision to relocate retail services might have on (1) historic resources and (2) the surrounding environment, specifically traffic and parking impacts within a coastal zone and in the residential neighborhood around the Venice Carrier Annex. Each of these issues is addressed below.

I. Historic Resources

The Venice Main Post Office was constructed in 1939 and is eligible for listing in the National Register of Historic Places. An oil-on-canvas mural entitled "Story of Venice" by artist Edward Biberman is currently on display in the lobby. Several customers expressed concern that the building and/or mural would not be preserved.

Section 106 of National Historic Preservation Act ("NHPA") requires federal agencies to take into account the effects of their proposed undertakings on historic properties, and when such effects are possible, to initiate and complete the Section 106 consultation process. Section 106 review ensures that federal agencies consider historic properties, along with other factors such as cost and agency mission, in the planning process of proposed undertakings. However, the preservation of every historic property is not the goal of Section 106, nor does Section 106 require a business to continue to operate in a historic property even if doing so causes the business to become unprofitable.

The relocation of retail services is not an "undertaking" within the meaning of Section 106. An undertaking is a "project, activity or program" that can result in changes in the character or use of historic properties. The relocation of retail services does not alter the character of the Venice Main Post Office building or the mural. Nor does it change the uses that can be made of the property. There will be no "undertaking" within the meaning of NHPA until the Postal Service adopts a plan for the reuse of the Venice Main Post Office or the transfer of the Post Office building from Postal Service ownership to private ownership. The

Postal Service will initiate the Section 106 consultation process when it develops plans for the reuse or disposal of the property, and the City of Venice will be a consulting party. The Postal Service will include measures to ensure the mural will remain available for public viewing in any plan for reuse or disposal of the Post Office property.

II. Traffic and Parking

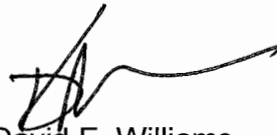
The Venice Main Post Office will be relocated 400 feet to the Venice Carrier Annex. The relocation will not result in any negative environmental impacts, nor will it be inconsistent with the policies of the California Coastal Act. The Carrier Annex can accommodate retail counters and Post Office Boxes without expansion of the building. While trips will be 400 feet shorter or longer depending on the direction from which vehicles are traveling, there will be no rerouting of traffic as a result of the relocation. Although several customers expressed concerns about a parking shortage in the area, this situation should not be exacerbated by the relocation of the Venice Main Post Office since the Carrier Annex property includes an on-site parking lot for postal vehicles and will be restriped to accommodate additional parking spaces for our customers.

III. Balancing the Impact on the Community and the Best Interests of the Postal Service

While the Postal Service is not insensitive to the impact of this decision on its customers and the Venice community, the relocation of the Venice Main Post Office is in the best interest of the Postal Service. The Venice Carrier Annex can accommodate the retail counters and Post Office Boxes without expansion of the building. Relocation of the carriers from the Venice Carrier Annex to the Venice Main Post Office was considered, but rejected because the Venice Main Post Office has insufficient parking to accommodate additional operations and insufficient platform space to accommodate tractor/trailer mail delivery. I have also taken into account the comments regarding the physical appearance of the Annex. The Postal Service will realize an annual cost savings of \$135,498 by moving retail services into the Venice Carrier Annex. The annual cost savings takes into consideration the cost of relocation, which is offset by savings from utilities and maintenance labor.

In reaching this decision, I considered all of the public input received but the objections expressed do not outweigh the financial exigencies facing the Postal Service. With current projections for declining mail volume, and the financial condition of the Postal Service, the Postal Service must make any feasible change to reduce costs. As our customers are no doubt aware, the Postal Service is funded by the sales of its services and products. It has an obligation to match its retail and distribution networks to the demand for its services from customers.

Accordingly, I conclude that there is no basis to set aside the decision to relocate the Venice Main Post Office, 1601 Main Street, to the Venice Carrier Annex, 313 Grand Boulevard. This is the final decision of the Postal Service with respect to this matter, and there is no right to further administrative or judicial review of this decision.

A handwritten signature in black ink, appearing to be 'DA' followed by a long horizontal stroke.

David E. Williams
Vice President, Network Operations

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July 20, 2012

Mr. Dallan Wordekemper, CCIM
Federal Preservation Officer
United States Postal Service
475 L'Enfant Plaza, SW, Suite 6670
Washington, DC 20260-1862

Dear Mr. Wordekemper:

I am writing to you on behalf of the City of Los Angeles, as the City's designated Certified Local Government (CLG) contact under the National Historic Preservation Act's CLG Program. I am in receipt of the July 13, 2012 letter to you regarding the Venice Post Office, from Mr. Reid J. Nelson, Director of the Office of Federal Agency Programs of the Advisory Council on Historic Preservation.

We understand that the California State Historic Preservation Officer (SHPO) is not authorized by California state law to accept a preservation covenant or easement that would allow the transfer of this property to occur with a finding of no adverse effect (NAE) under Section 106 of the National Historic Preservation Act. Because the Venice Post Office is a historic resource of considerable significance within the Venice community and the City of Los Angeles, the City and the Office of Historic Resources are eager to play a constructive role in ensuring the building's long-term preservation and vibrant reuse.

City staff have reviewed the draft preservation covenant originally prepared for the SHPO, and have inserted the City in place of the SHPO along with a few minor modifications to the draft. The City of Los Angeles agrees that it will assume the duties and responsibilities of the attached covenant.

If you have any questions regarding this issue, please contact me at (213) 978-1181 or via email at ken.bernstein@lacity.org.

Sincerely,

MICHAEL J. LoGRANDE
Director of Planning

KEN BERNSTEIN,
Principal City Planner and Manager, Office of Historic Resources

Mr. Dallan Wordekemper
Page 2

cc: Ms. Sharon Freiman, United States Postal Service
Mr. Reid J. Nelson, Advisory Council on Historic Preservation
Ms. Caroline Hall, Advisory Council on Historic Preservation
Mr. Wayne Donaldson, State Historic Preservation Officer, State of California
Ms. Linda Dishman, Los Angeles Conservancy
Mr. Joel Silver, Silver Pictures

PRESERVATION COVENANT

1601 Main Street, Venice, CA 90291

PRESERVATION COVENANT LANGUAGE

In consideration of the conveyance of certain real property, located at 1601 Main Street within the Venice community of the City of Los Angeles, the County of Los Angeles, State of California.

(1) The grantee hereby covenants on behalf of itself, its heirs, successors and assigns at all times to restore, maintain and preserve this property in accordance with the recommended approaches of the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings" (National Park Service, 1995) in order to preserve those qualities that make this property eligible for listing in the National Register of Historic Places.

(2) No construction, alteration or rehabilitation shall be undertaken or permitted to be undertaken that would affect the historic features of the property without prior consultation with, and the express permission of the City of Los Angeles ("City"), pursuant to an application made by the grantee to the Department of City Planning and its Office of Historic Resources. No excavation or other subsurface ground disturbances may be done or permitted to be done at the property without prior consultation with, and the express permission of, the Native American Heritage Commission (NAHC) and those Native American tribal organizations identified by the NAHC as having knowledge of Native American cultural resources on, under or near the property (collectively, the "Native American Organizations"). Grantee shall make such application to the NAHC as may be necessary for grantee to obtain the identity of the applicable Native American tribal organizations.

(3) The City and authorized representatives of the Native American Organizations shall be permitted at all reasonable times to inspect the property in order to ascertain if the above conditions are being met.

(4) In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the City and/or the Native American Organizations, as applicable may, but are not required to, following reasonable notice to the grantee, institute suit to enjoin said violation or to require the restoration of the property.

(5) This covenant is binding on the grantee, its heirs, successors and assigns in perpetuity. All stipulations and covenants contained herein shall be inserted by the grantee verbatim or by express reference in any deed or other legal instrument by which the grantee divests itself of any interest in the property or any part thereof.

(6) The failure of the City or the Native American Organizations to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or use of such right or remedy at any other time.

(7) This covenant shall be a binding servitude upon the property and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the grantee agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

(8) The City may, for good cause, modify or cancel any or all of the foregoing restrictions other than the restrictions upon excavation or subsurface ground disturbance, upon application of the grantee, its heirs, successors or assigns. Cancellation or modification of the restrictions on excavation or subsurface ground disturbance may be made only by the Native American Organizations upon application of the grantee, its heirs, successors or assigns.